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Bill Caton



CHARTER
MEDICAL
CORPORATION

DAVID R. TATUM
Assistant Vice President
Government Relations

January 29, 1996

VIA AIRBORNE OVERNITE

The Honorable Reed E. Hundt
Chairman
Federal Communications Commission
1919 M Street N.W.
Washington, D.C. 20554

Re: Toll Free Access Code
CC Docket No. 95-155
WRITTEN EX PARTE PRESENTATION

Dear Chairman Hundt:

Charter Medical Corporation ("Charter") is an international health care provider specializing in the diagnosis and treatment of addictive diseases and psychiatric disorders. Like many other companies, Charter uses a mnemonic toll free 800 number -- 1/800-CHARTER -- in its business. That number is vital to Charter's business and serious consequences could arise from confusion between Charter's 800 number and the parallel 888 number that soon will become available. At the same time, new evidence shows that protecting current holders of mnemonic 800 numbers will have a minimal impact on the 888 code. Consequently, Charter urges you to support the adoption of rules to protect 800 users with special interests in their numbers from having the parallel numbers assigned to others when the 888 service access code becomes available later this year.

As Charter described in its comments in this proceeding, 1-800-CHARTER is used to providing callers with easy access to its clinical staff 24 hours a day, seven days a week. Callers receive free clinical assessments and referrals to the most appropriate treatment options within their communities. This number now receives nearly one million calls a year.

Since initiating the 1-800-CHARTER service, Charter has built a reputation for being available at any time to people who need mental health treatment through this mnemonic telephone number. As a result, the easy, prompt availability of service through that number is important not only to Charter as a company, but to many Americans seeking treatment for mental illness or substance abuse.

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The Honorable Reed E. Hundt
January 29, 1996
Page Two

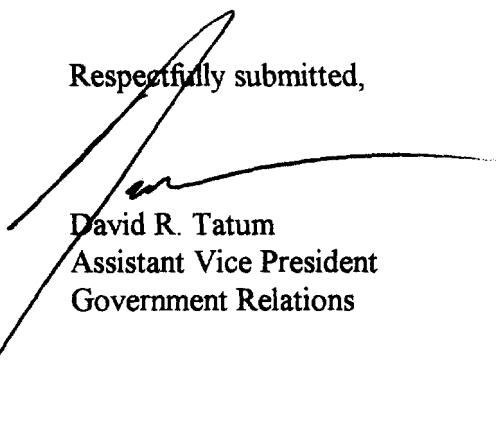
The introduction of the 888 service access code poses significant risks to the value of mnemonic numbers such as 1-800-CHARTER. If 1-888-CHARTER is assigned to another company, there is a significant likelihood of confusion between the current 800 number and the new 888 number. This could have serious consequences for people in distress who want to reach 1-800-CHARTER for assessments and referrals. At the same time, Charter is likely to lose much of its investment in the development of 1-800-CHARTER as the number to call for mental health assistance.

Charter's situation is repeated many times over throughout American industry. While relatively few companies offer the kinds of crisis services that Charter provides, there are thousands of mnemonic 800 numbers in use today. Providing the companies that hold those numbers with the opportunity to prevent assignment of the parallel 888 numbers to other entities will protect the often significant investments that have been made in promoting their current 800 numbers. Protecting current mnemonic 800 numbers will reduce customer confusion resulting from misdialing. Such protection also could prevent unnecessary costs to users of 888 numbers, who otherwise could end up paying for thousands (or even millions) of calls from people who mistakenly dial their numbers when they mean to dial heavily used mnemonic 800 numbers. Thus, protecting current mnemonic 800 numbers from parallel assignments of 888 numbers will create significant benefits for consumers and toll-free service subscribers alike.

Moreover, a recent analysis has shown that providing protection for current holders of mnemonic numbers will not have a significant impact on the usage or lifespan of the 888 code. As described in *Communications Daily* on January 11, a survey shows that, in fact, only three percent of all 800 numbers now in service are used as mnemonic numbers. Thus, even if every single mnemonic number were reserved, there would be only a minimal impact on the life of the 888 code or other future codes. When this small cost is weighed against the important benefits of protecting current mnemonic 800 numbers, it is apparent that protection is warranted. For these reasons, Charter urges the Commission to adopt rules in this proceeding that will give current holders of mnemonic 800 numbers a fair opportunity to protect themselves from assignment of parallel numbers in the 888 code.

In accordance with Section 1.1206 of the Commission's Rules, two copies of this letter are being filed with the Secretary's office on this date. Please inform me if any questions should arise in connection with this letter.

Respectfully submitted,



David R. Tatum
Assistant Vice President
Government Relations

HARDY AND CAREY, L.L.P.
ATTORNEYS AT LAW
111 VETERANS BOULEVARD
SUITE 255
METAIRIE, LOUISIANA 70005
TELEPHONE: 504-830-4646
TELEFAX 504-830-4659

January 30, 1996

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265-142

Kathleen O'Brien Ham, Chief
Auctions Division
Wireless Telecommunications Bureau
Federal Communications Commission
2025 M Street, N.W. - Room 5202
Washington, DC 20554

**RE: Radiofone PCS, L.L.C. -
FCC Account Number 0721299534
Baton Rouge PCS Limited Partnership -
FCC Account Number 0721309501
Houma/Thibodaux PCS Limited Partnership -
FCC Account Number 0721309500**

Dear Ms. Ham:


On behalf of Radiofone, Inc. and its applicant affiliates, Radiofone PCS, L.L.C., Baton Rouge PCS Limited Partnership, and Houma/Thibodaux PCS Limited Partnership (collectively, the Radiofone Affiliates), I am writing to inform you that the Radiofone Affiliates is compelled to withdraw from the C Block PCS auction.

The Radiofone Affiliates have been forced to take this action because, despite repeated inquiries and formal requests for waiver in their applications, they have been unable to obtain the FCC's assurance that the FCC would not enforce its penalty provisions if a Radiofone Affiliate were the high bidder on any of the three southeastern Louisiana BTAs, and were subsequently forced to withdraw, default or be disqualified. The bidding in those markets has cumulatively surpassed \$43 million, and the Radiofone Affiliates cannot take the risk that the FCC will impose such penalties. Because of the volatility of the wireless telecommunications marketplace, these penalties (i.e., the difference between the high bid and the price obtained at re-auction, plus 3%) could amount to millions of dollars; and because the Commission has refused to either stay the auction pending further rulemaking, or to expedite the rulemaking mandated by the Cincinnati Bell Tel Co. v FCC decision, the Radiofone Affiliates furthermore cannot take the risk that they would be forced to expend what would amount to more than one hundred million dollar building out licenses won at the auction, only to have them taken back by the FCC without being compensated for their expenses. The resulting stranded investment would threaten the financial stability of Radiofone, Inc. and its affiliates.

K. O'Brien Ham
January 30, 1996
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One January 11, 1996, counsel for Radiofone Affiliates informally sought assurance from the staff of the Office of the General Counsel and was directed to reduce the concern to a written request. Counsel immediately responded via overnight mail (a fax delivery was accomplished that day). A copy of attached hereto. The Radiofone Affiliates have exhausted their available waivers while awaiting clarification on the penalties issue from the FCC. And, despite Radiofone's petition for rulemaking, while the Commission has denied Radiofone's stay request, it has announced no timetable whatsoever for compliance with the Cincinnati Bell decision. The Radiofone Affiliates are therefore withdrawing from the auction without prejudice to any further judicial or administrative action they may seek.

Respectfully submitted,



Ashton R. Hardy

ARH/vm

cc: Chairman
All Commissioners
General Counsel

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HARDY AND CAREY, L.L.P.
ATTORNEYS AT LAW
111 VETERANS BOULEVARD
SUITE 255
METAIRIE, LOUISIANA 70005
TELEPHONE: 504-830-4646
TELEFAX 504-830-4659

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January 11, 1996

265-142

Via Facsimile - (202) 418-2819

William E. Kennard, Esq.
General Counsel
Federal Communications Commission
1919 M. Street, N.W.
Room 614B
Washington, DC 20554

**RE: Radiofone, Inc., Applicant
Block C PCS Auction**

Dear Mr. Kennard:

As you know, I am counsel to Radiofone, Inc. which, as controlling party in the entities that serve as cellular licensees in the New Orleans, Baton Rouge, and Houma/Thibodaux, Louisiana cellular markets, is an applicant and presently bidding in the Block C PCS auction. The Commission authorized Radiofone to bid "conditionally" based on the ultimate outcome of "administrative or judicial proceedings." Radiofone's next bid must exceed \$20 million to maintain eligibility and, as counsel for Radiofone, I have provided them with advice regarding the Commission's rules relative to penalties that could be imposed by the Commission on a successful bidder who is ultimately disqualified. As Chairman Hundt has been recently quoted by the press as having stated that Radiofone will either be disqualified or have to face some other administrative procedure relative to its existing cellular licenses, I thought it appropriate to revisit the issue with you.

During the course of litigation, I spoke with several members of your staff, including Mac Armstrong and Chris Wright. During those discussions, I expressed concern about the ultimate imposition of penalties upon Radiofone if it were the successful bidder. Indeed, in pleadings filed before the United States Court of Appeal for the Sixth Circuit, these concerns were expressed in soliciting judicial protection. In a responsive pleading filed on behalf of the Commission, we noted the following quote:

"... But having invited Radiofone to bid conditionally, it would plainly be an abuse of discretion for the Commission to fail to return Radiofone's payments if, at the end of administrative or judicial

proceedings, Radiofone is not entitled to hold a license. The Commission does not intend to follow such a course, and a court could correct it if it did. ..."

Commission Opposition to Motion for Clarification, page 5-6.

In reviewing the Commission's "penalty" rules, I noted that Sections 24.704 and 1.2104 provide for specific penalties for a bidder who withdraws a high bid, defaults or is disqualified. As I understand the rules, they provide that a bidder who withdraws a high bid during the course of an auction will be subject to a penalty equal to the difference between the amount bid and the amount of the winning bid the next time the license is offered by the Commission. No penalty will be assessed if the subsequent winning bid exceeds the withdrawn bid. See: § 24.407(1) and § 1.2104(g)(1). If a high bidder defaults or is disqualified after the close of an auction, that bidder would be subject to the penalty described above plus three percent (3%) of the subsequent winning bid. If the subsequent winning bid exceeds the defaulting bidder's bid amount, the three percent (3%) will be based on the defaulting bidder's bid amount. See: § 24.704(2) and § 1.2104(g)(2).

Apparently, depending upon the actions taken by a successful bidder, a penalty of three percent (3%) of the subsequent winning bid plus the difference between its bid and the subsequent bid, could amount to a substantial amount of money. A subsequent winning bid of \$40,000,000 for example, would create a minimum penalty of \$1.2 million. More significantly, the difference between a subsequent winning bid and Radiofone's final bid might create a penalty that could well doom the company.

I have been informally assured by your staff on several occasions that if **Radiofone is the ultimate successful bidder, but does not become the licensee because of the cellular cross-ownership rule on the 45 MHz cap rule**, the Commission does not intend to impose those penalties upon Radiofone. The above quoted language in the pleading seems to provide protection from the penalties; however, because of the potential for Draconian consequences, Radiofone would like to have assurance on the point.

In filing its application to bid in the Block C auction, Radiofone sought, in addition to the waiver of the cellular cross-ownership rule and the 45 MHz cap rule, a waiver of the Commission's penalties pursuant to the above quoted rules. In discussing this with your staff attorneys, I was asked to direct a letter to you providing my interpretation of the "worst case scenario" and asking that you assure

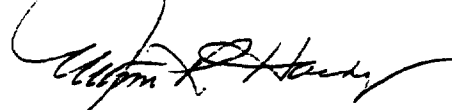
W. E. Kennard, Esq.
January 11, 1996
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us that the Commission does not intend to impose penalties on Radiofone under the circumstances described above. That is the purpose of this letter.

There is some urgency in a request for this clarification as the auction reopens and the next bid must be made on Tuesday, January 16, 1996. Accordingly, I would appreciate the courtesy of an expeditious reply to this inquiry.

With kind regards, I am

Sincerely,

A handwritten signature in dark ink, appearing to read "Ashton R. Hardy", written over a horizontal line.

Ashton R. Hardy

ARH/vm

cc: Mr. Lawrence Garvey
Robert M. Weinberg, Esq.